IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2007

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

Habeas Corpus Petition No.1551 of 2007

Jakkiriya .. Petitioner

Vs

1. The State of Tamil Nadu,
   rep. by its Secretary,
   Prohibition and Excise Department
   Fort St. George, Chennai.

2. The Commissioner of Police
   Chennai Police, Egmore,
   Chennai 600 008. .. Respondents

Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus calling for the records of the Order of detention dated 14.06.2007 made in NO.238/BDFGISSV/2007 on the file of the 2nd respondent and quash the same and direct the respondents herein to produce the body of detenu Ismail who is detained in the Puzhal Central Prison, Chennai set him at liberty.

For Petitioner : Mr.K.G.Senthilkumar
For Respondents: Mr.N.R.Elango
Addl. Public Prosecutor

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O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The petitioner, father of the detenu by name Ismail, challenges the order of detention passed by the second respondent in No.238/BDFGISSV/2007 dated 14.6.2007 branding his son as a Goonda, by filing this petition for Habeas Corpus seeking to call for the records of the second respondent relating to the order of detention, referred to above, to quash the same and to direct the respondents to

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produce the detenu before this Court and set him at liberty forthwith.

2.1. The impugned order of detention dated 14.6.2007 was passed on the basis of ground case in Crime No.229 of 2007 on the file of Egmore Railway Police Station for alleged commission of offences under Sections 392 and 506(2) IPC, complaint of which was lodged by one Pradeep Kumar. According to the complainant, on 31.5.2007 at about 1.45 p.m., when his daughter by name Shiny was proceeding near the ticket counter at Light House Railway Station, the detenu and another followed her and at the knife point, threatened her and snatched her gold chain. When she raised alarm, the ticket issuing clerk and the public chased and tried to apprehend the accused, but they brandished their knives and pelted stones on them, which scattered all over the roadside. Out of fear and danger to their lives, the public ran here and there resulting in the dislocation of traffic and while the accused creating panic and terror situation tried to escape from the spot, the public and the ticket issuing clerk surrounded them and handed over them to the police. The detenu and the other accused were arrested and later, produced before XIV Metropolitan Magistrate, Egmore, Chennai, who remanded them to judicial custody.

2.2. The second respondent, taking note of the above ground case and finding that there are two adverse cases, one on the file of D.3 Ice House Police Station in Crime No.460 of 2007 for offences under Sections 457, 380 IPC and the other on the file of Tambaram Railway Police Station in Crime No.266 of 2007 for the offence under Section 379 IPC., having satisfied that there is a compelling necessity to detain the detenu in order to prevent him from indulging in the activities which are prejudicial to the maintenance of public order, ordered his detention branding him as a Goonda.

3. The learned counsel for the petitioner placing reliance on the decision of the Apex Court in DARPAN KUMAR SHARMA alias DHARBAN KUMAR SHARMA v. STATE OF TAMIL NADU [(2003) 1 CRIMES 446], contends that the said two adverse cases relate to the offence punishable under Section 379 and 380 I.P.C., and therefore, the solitary instance of robbery mentioned in the ground case is not relevant for sustaining the order of detention and hence, the impugned order of detention suffers on the ground of non-application of mind on the part of the detaining authority.

4. We have heard learned Additional Public Prosecutor on the above said point.

5. As rightly pointed out by the learned counsel for the petitioner, it is evident that the adverse cases mentioned in the grounds of detention do not relate to any law and order problem. But, the offence said to have been committed by the detenu as per the

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ground case attracts the provisions of the Tamil Nadu Act 14 of 1982.

6.1. In DARPAN KUMAR SHARMA alias DHARBAN KUMAR SHARMA v. STATE OF TAMIL NADU [(2003) 1 CRIMES 446], cited supra, whereunder the order of detention was based on the solitary instance of robbery, the Apex Court held as follows:-

> "... Though in the grounds of detention the detaining authority had stated that by committing this offence in public the detenu created a sense of alarm, scare and a feeling of insecurity in the minds of the public of the area and thereby acted in a manner prejudicial to the maintenance of public order which affected the even tempo of life of the community, but citation of these words in the order of detention is more in the nature of a ritual rather than with any significance to the content of the matter. Thus, a solitary instance of robbery as mentioned in the grounds of detention is not relevant for sustaining the order of detention for the purpose of preventing the petitioner from acting in a manner prejudicial to the maintenance of public order."

6.2. That apart, the above ratio laid down by the Apex Court was followed by a Division Bench of this Court, in which one of us (P.D.DINAKARAN, J.) was a party, in MALA v. THE SECRETARY TO GOVERNMENT, PROHIBITION AND EXCISE DEPARTMENT, GOVT. OF TAMIL NADU, CHENNAI, [(2004) M.L.J. (Crl.) 306].

7. Admittedly, in the instant case, the adverse cases relate to the offence of theft punishable under Section 379 and 380 IPC and the ground case relates to the offence of robbery punishable under Section 392 IPC and hence, we are of the opinion that the ratio laid down in DARPAN KUMAR SHARMA's case, cited supra, squarely applies to the present case on hand, which is also not disputed by the learned Additional Public Prosecutor.

8. Applying the ratio laid down by the Apex Court in Darpan Kumar Sharma's case, cited supra, we are inclined to set aside the order of detention, Accordingly, the order of detention is set aside and the Habeas Corpus Petition is allowed. The detenu is directed to be released forthwith, unless he is required in any other case.

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Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

1. The Secretary,
   Govt. of Tamil Nadu,
   Prohibition and Excise Department
   Fort St. George, Chennai 9.
2. The Commissioner of Police
   Chennai Police, Egmore, Chennai.
3. The Superintendent
   Central Prison,Puzhal, Chennai.
4. The Joint Secretary to Government,
   Public [Law and Order] Department,
   Fort St. George, Chennai 9.
5. The Public Prosecutor
   High Court, Madras.

+ 1 CC To Mr. G.Senthil Kumar, Advocate SR NO.73437

HCP No.1551 of 2007

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